

### **REMARKS**

The foregoing amendments and these remarks are responsive to the Office Action mailed September 9, 2004 in connection with the above-identified application.

#### **Claim Rejections 35 U.S.C. § 103**

In the Action, claims 1-3, 5-10, 12, and 15-18 were rejected under 35 U.S.C. 103(a) as being unpatentable over Youngblood et al., U.S. Patent No. 3,486,173, in view of Eckstrom et al, U.S. Patent No. 4,630,530. Claim 4 was rejected under 35 U.S.C. 103(a) are being unpatentable in view of Youngblood et al., in view of Eckstrom et al. and in further view of Ware, U.S. Patent No. 6,550,072. Claim 11 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Youngblood et al. in view of Eckstrom et al. and in further view of Miller et al., U.S. Patent No. 5,685,028. Claim 14 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Youngblood et al. in view of Eckstrom et al. and in further view of Her, U.S. Patent No. 5,850,638. Claims 1-3, 5-10, 12 13, and 15-18 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Bruyere, U.S. Patent No. 6,003,157, in view of Eckstrom et al.

In the foregoing amendments, claims 12-18 have been canceled.

The Applicant's claimed invention is a bedpan having a detachable ventilation unit which includes an ozone generating means and fan means. The Applicant wishes to point out that a bedpan (i.e. a portable toilet receptacle designed to be positioned under a prone patient) having an integral ozonation means for deodorizing is not shown or disclosed in the prior art. In the

Action, the Examiner has cited Youngblood et al., U.S. Patent No. 3,486,173, which discloses a bedpan with a detachable ventilation unit having an electric fan and a charcoal filter disposed therein. As noted by the Examiner, Youngblood et al. do not teach the use of an ozone generating means in a bedpan.

The Examiner states that the practice of using an ozone generating means for a toilet is demonstrated in Eckstrom et al., and that it would have obvious to provide an ozone generating means in the Youngblood device in view of Eckstrom.

The Applicant respectfully submits that the Eckstrom reference is not analogous prior art, and therefore cannot be relied upon as a reference under 35 U.S.C. § 103. Eckstrom et al disclose a filtering unit for a lavatory room located at the rear of an automotive bus. The unit comprises a housing of a size to fit between the row of seats in the bus and a forwardly facing wall of a bus lavatory behind the seats. The housing has air inlet and outlet openings for communication with duct openings in the upper and lower portions of the lavatory. A drawer in the filtering unit contains an air filter.

The Eckstrom et al. system is designed for deodorizing *an entire room*. The requirements for ventilating and deodorizing a bedpan, which is relatively small, portable and self-contained, would obviously require a very different approach than that which would be used to ventilate an enclosed architectural space. A bedpan, being a small item designed for manual placement beneath a patient, cannot be said to be analogous to a whole room having toilet fixtures installed therein. The bedpan of the instant invention must provide a path of treatment to stop ozone from

contacting the skin of the individual. The filtration unit in the Eckstrom et al. reference is not located in the toilet bowl itself, but in a wall which is integral to a bus. The benefit to the individual is the elimination of an embarrassing instance should the bedpan be changed infrequently. Further, the nurse who is called upon to change the bedpan benefits from the early removal of noxious odors. Thus, while ozonators are known in the industry, the ability of an ozonator to treat only odors and prevent ozone from contacting of the skin operates to the benefit of the patient and the attending nurse. Thus, the use of Eckstrom wherein an entire room is deodorized is not analogous for release of ozone in a hospital setting is neither beneficial nor safe.

To rely on a reference under 35 U.S.C. § 103, it must be analogous prior art. "In order to rely on a reference as a basis for rejection of an applicant's invention, the reference must be in the field of the applicant's endeavor or, *if not, then be reasonably pertinent to the particular problem with which the invention was concerned.*" [Emphasis added.] *In re Oetiker*, 977 F.2d 1443, 1446 24 USPQ2d 1443, 1445 (Fed. Cir. 1992).

With the Applicant's invention, the relevant problem to be solved was how to incorporate an ozone generating means within the small and very unsanitary confines of a standard hospital bedpan. The wall-mounted room air filtration system disclosed by Eckstrom et al. is in no way relevant to the particular problems addressed and solved by the Applicant's invention. Various means of deodorizing air, including ozonation, are well known in the art, and it would be obvious to install any such means in a room such as a lavatory. However, to install an ozonation means

in a bedpan, there are unique design problems to be solved. The ozonation means must be in airflow communication with the interior void of the bedpan, and yet must be positioned in such a way that it will not come in direct contact with human waste materials. Further, the electrically-powered ozonation and fan features of the bedpan must be designed in such a way that the entire bedpan can be thoroughly washed.

The Applicant believes that the foregoing demonstrates that the Eckstrom et al. reference is not pertinent to these design problems faced by the Applicant and also solved by virtue of Applicant's invention. Since use of an ozone generator as an air deodorizing means is obvious and well known, the Applicant need not have looked to the Eckstrom et al. for this suggestion. The problem faced by the Applicant was *not* how to deodorize the ambient air in a bathroom. The problem addressed by the Applicant was how install an ozonation means *into a bedpan* in an operative fashion, and the solutions to this problem are not taught or otherwise contemplated by Eckstrom et al. This critical difference is highlighted by the fact that ozone is not desired to be openly released in a room since ozone is corrosive. This is especially problematic when ozone is released in a room filled with medical equipment or patients having ailments. Unique to the applicant's invention is that no ozone contacts the skin and, due to the small area to be treated, any loss of ozone is significantly lowered or eliminated.

The Applicant believes that the foregoing serves to demonstrate that the Eckstrom et al. reference is not "...reasonably pertinent to the particular problem with which the invention was concerned." The Applicant therefore submits that the Eckstrom et al. reference is improperly

cited prior art under 35 U.S.C. § 103. In the foregoing amendments, the Applicant has amended claims 1 and 9 to more specifically claim a “bedpan” instead of a “toilet receptacle” in order to more clearly distinguish the Applicant’s invention over the prior art.

In the Action, Claims 1-3, 5-10, 12 13, and 15-18 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Bruyere, U.S. Patent No. 6,003,157, in view of Eckstrom et al. The Bruyere device is a deodorizing canister having an electric fan disposed therein which is connected to a standard fully plumbed toilet by means of a flexible hose. The Bruyere device is not a bedpan as is Applicant’s claimed device. As stated above, the Applicant has amended claims 1 and 9 to specifically claim a “bedpan.” The Applicant submits that since neither of the cited references disclose devices which includes bedpans, the proposed combination of Bruyere and Eckstrom et al. and would not result in Applicant’s invention as set forth in Applicant’s instantly amended claims 1-11. Claims 12-18 which were directed to an exterior device for a toilet have been canceled in the foregoing amendments.

Moreover, as stated in the arguments set forth above, the Applicant believes that Applicant has established that Eckstrom et al. is improperly cited prior art and not available as a reference under 35 U.S.C. § 103.

In view of the foregoing, the Applicant respectfully requests reconsideration and withdrawal of the rejections under 35 U.S.C. § 103 of claims 1-11.

### **Claim Objections**

In the Action, claims 9 and 12 were objected to because they ended in two periods. Claim 9 has been corrected in the foregoing amendments. Claim 12 has been canceled. The Applicant therefore requests withdrawal of the objections to the claims.

#### **Drawing Objections**

In the Action, the drawings were objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not contain the reference number 87 mentioned in the description. In response to the objection, the Applicant is submitting herewith a replacement sheet containing Figs. 6 and 7 which includes reference number 87 in Fig. 6. Withdrawal of the objection to the drawings is respectfully requested.

#### **Prior Art Made of Record**

The Applicant has reviewed the prior art made of record and not relied upon. The Applicant respectfully submits the present invention is patentable thereover.

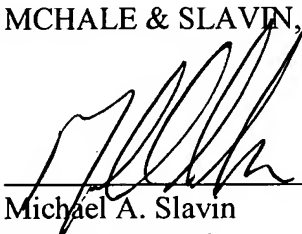
**Conclusion**

The Applicant respectfully submits that the application now stands in condition for allowance. The Examiner is requested to telephone the undersigned in order to discuss any further objections, allowing Applicant to expedite a response.

Respectfully submitted,

MCHALE & SLAVIN, P.A.

Dec 9, 04  
Date

  
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**Amendments to the Drawings**

Please substitute the enclosed sheet containing informal drawing figures 6 and 7 (labeled “Replacement Sheet”) for the informal drawing figures 6 and 7 as filed. No new matter has been added.